

**REMARKS**

Claims 1-16 are pending in the present application. Claims 1-3 and 8-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ito *et al.* (U.S. Patent No. 6,442,293) ("Ito"). Claims 4-7 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ito as applied to claim 1 above, and further in view of Tanaka *et al.* (U.S. Patent No. 6,630,958) ("Tanaka"). Applicant adds new claims 17-23 and submits the following in traversal of the prior art rejections.

Applicant's invention relates to an image processing apparatus and a method in which an image having a strong possibility of failing in computing a proper amount of image correction in an image correcting amount computing unit, is subjected to an operator's judgment, in an embodiment.

**Rejection of Claims 1-3 and 8-15 Under § 103(a) Over Ito**

Ito relates to measuring technology utilized for surveying and making a drawing in a land surveying field.

Applicant submits that claim 1 is patentable because Ito is improper prior art. Ito is a nonanalogous art and cannot be properly used as a basis for a § 103 rejection. M.P.E.P. 2141.01(a). In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *Id.* As noted above, Ito relates to measuring technology utilized for land surveying. Specifically, Ito relates to image forming technology for forming a digital orthogonally projected image from images to be

superposed on the drawing when a drawing of a site to be measured is made. This is different from the field of Applicant's endeavor. An embodiment of the Applicant's invention relates to:

image processing in which an image having a strong possibility of failing in computing a proper amount of image correction in an image correcting amount computing unit, such as an image belonging to a group that contains images taken with unusual types of light sources and images having a color failure, or a group that contains images taken with backlight and images taken with an electronic flash is subjected to an operator's judgment.

Specification, page 1. In the embodiment, the image correction is performed on an image. In contrast, Ito teaches using images, not to correct the images themselves, but to form an orthogonally projected image. Thus, Applicant submits that Ito is not proper prior art.

In addition, Applicant submits that Ito fails to teach, suggest, or provide motivation for an image correcting amount computing unit and image processing unit as claimed. Claim 1 recites an image correcting amount computing unit for computing a proper amount of image correction based on image data of an image and an image processing unit for performing image processing based on the proper amount of image correction computed by said image correcting amount computing unit, in combination with other elements. In the Office Action, the Examiner alleges that the coordinate transformation parameter calculating section 102 and the additional image measuring section 105 are analogous to the claimed image correcting amount computing unit. However, sections 102 and 105 do not perform computation or processing of image correction in the manner claimed. Rather, sections 102 and 105 calculate a transformation parameter which is not disclosed or suggested as having to do with any sort of image correction. In fact, the transformation parameter is used to transform image coordinates into photographic coordinates

and correlating the image coordinates with the three-dimensional coordinates. Col. 5, lines 54-64.

Moreover, Applicant submits that nowhere in the reference is there any mention of wherein the proper amount of image correction computed by said image correcting amount computing unit is evaluated for a degree of correctness, as claimed. Again, the transformation parameter is not evaluated in any way for a degree of correctness in Ito. Instead, the transformation parameter is inputted into the ortho-image forming section 103 (col. 6, lines 7-12) and no further evaluation of the transformation parameter takes place.

Further, nowhere in Ito is disclosed a description of evaluating a transformation parameter for a degree of correctness by any means. Ito actually mentions in col. 8, line 55 to col. 9, line 26 that a formed ortho-image is checked for some check items such as the failed, or inaccurate, positioning of the control points in the ortho-image formed by using the transformation parameter and failure of the result of orientation to converge; that the display function automatically displays by an identifier, a flag or the like; and that the display function discriminately displays a proper range by color or patterns. However, such a check in Ito does not check the transformation parameter for a degree of correctness, but merely checks to confirm the ortho-image itself formed by using the transformation parameter.

Assuming *arguendo*, that the transformation parameter is some sort of image correction, the transformation parameter is not used for performing image processing in any sort of image processing unit. In the Office Action, the Examiner analogizes the ortho-image correcting section 104 as disclosing the claimed image processing unit. However, the ortho-image

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. Appln. No. 09/624,161

correcting section 104 does not perform any sort of image processing based on the transformation parameter.

For at least the above, Ito fails to teach, suggest, or provide motivation for all elements of claim 1, and thus, claim 1 is patentable.

Claims 2-3 and 8-12, which depend from claim 1, are patentable for at least the reasons submitted for claim 1.

Alternatively, or in addition, Applicant submits that claim 3 is patentable because Ito fails to teach, suggest, or provide motivation for a verification unit in which an operator performs an input operation for verifying said image belonging to the group of images, as claimed. To the contrary, Ito discloses “extracting only an overlapped part between adjacent images in the formed ortho-image and displaying the same.” Col. 9, lines 2-3. There is no mention or suggestion of verifying each of the images photographed (col. 8, lines 28-32) but an ortho-image derived from the images photographed is displayed (col. 8, lines 51-52).

For reasons similar to those submitted for claim 1, claims 13-15 are patentable.

Rejection of Claims 4-7 and 16 Under § 103(a) over Ito and further in view of Tanaka

Tanaka relates to a digital camera which can take a picture at a fast speed and display an inverted picture in a monitor. Applicant submits that claims 4-7 and 16 are patentable for at least the reasons submitted for claim 1 and that Tanaka fails to make up for the deficiencies of Ito.

The Examiner contends that it would be obvious to correct for lighting conditions in Ito using the apparatus of Tanaka. However, light conditions are not of significance in Ito which relates to a geographic survey where light can fluctuate greatly between areas, and also over

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. Appln. No. 09/624,161

large expanses of time (*e.g.*, a full day) in which the survey occurs. Issues of backlight and flash would not apply in Ito. Therefore, the Examiner's proffered motivation in connection with Ito and Tanaka is not supportable.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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